


## TOPICS OF INTEREST TO LAWYERS

### Trust Accounts and Recordkeeping

- ◆ Computer-generated checks
- ◆ Computer-generated trust account records
- ◆ Location of client trust accounts
- ◆ Prohibited transactions
- ◆ Proper identification of trust accounts
- ◆ Record retention requirements
- ◆ Required records
- ◆ Timing of disbursements

### Computer-generated checks

While **SCR 20:1.15(f)(1)e.1.** states that checks must be “pre-printed and pre-numbered,” OLR has interpreted this rule to allow firms to use checks that are printed with computer software programs, so long as those checks are pre-formatted to comply with the requirements for trust account checks. Those requirements are as follows:


1. The name and address of the lawyer or law firm, and the name of the account must appear in the upper left corner of the check;
2. With respect to IOLTA accounts, the account name must include the words “Client Account,” “Trust Account” or words of similar import. The acronym “IOLTA,” without the addition of “Trust Account” or “Client Account,” is not adequate. [Sample - Proper Check Format](#) 

#### **SCR 20:1.15(f)(1)e. Disbursement records.**

1. **Checks.** Checks shall be pre-printed and pre-numbered. The name and address of the lawyer or law firm, and the name of the account shall be printed in the upper left corner of the check. Trust account checks shall include the words “Client Account,” or “Trust Account,” or words of similar import in the account name. Each check disbursed from the trust account shall identify the client matter and the reason for the disbursement on the memo line.

### Computer-generated trust account records

Lawyers may use computerized accounting software to maintain the Transaction Register, the Individual Client Ledgers, and the Ledger for Account Fees and Charges. The software may also be used to assist in the Monthly Reconciliation process.

However, regardless of whether the records are maintained manually or with the assistance of computer software, they must include the components outlined in [SCR 20:1.15\(f\)\(1\) and \(2\)](#).  Lawyers need to exercise caution in purchasing software to assure that the program will comply with the record-keeping requirements of the trust account rule. In the past, a fairly common shortcoming has been the inability of certain software programs to print the transaction register and client ledgers with a running balance that is calculated after each individual transaction. While some programs have allowed a lawyer to review the information on the screen, the running balance has not been printable.

Printable records are essential because computer records are always at risk of being lost due to hardware and software problems, not to mention computer viruses. Pursuant to **SCR 20:1.15(f)(4)a.**, a lawyer who maintains trust account records by computer must maintain the various reports in a form that can be reproduced to printed hard copy, and electronic records must be regularly backed up by an appropriate storage device.

Computer software records relating to an IOLTA account must be printed every 30 days, and the printed copy must be retained for at least six (6) years, pursuant to **SCR 20:1.15(f)(4)b.**

**SCR 20:1.15(f)(4) Electronic record retention.**

- a. **Back-up of records.** A lawyer who maintains trust account records by computer shall maintain the transaction register, client ledgers, and reconciliation reports in a form that can be reproduced to printed hard copy. Electronic records must be regularly backed up by an appropriate storage device.
- b. **IOLTA account records.** In addition to the requirements of sub. (f) (4)a., the transaction register, the subsidiary ledger, and the reconciliation report shall be printed every 30 days for the IOLTA account. The printed copy shall be retained for at least 6 years, as required under sub. (e) (6).

**Location of trust accounts**

**SCR 20:1.15(e)(1)** requires that trust accounts be located at an insured financial institution that has at least one branch office in Wisconsin. In other words, the financial institution can be located in another state, provided that there is a branch in Wisconsin.

Further, under **SCR 20:1.15(h)(1)**, if the trust account is a demand account, (i.e., checking account), the financial institution must agree to report overdrafts on the account to the Office of Lawyer Regulation, regardless of whether the institution is located in Wisconsin or elsewhere.

**Note:** Since trust accounts located in Minnesota are also subject to overdraft reporting, a Minnesota law firm's trust account cannot be used for Wisconsin legal matters unless the Minnesota financial institution is able to report overdrafts to the Wisconsin Office of Lawyer Regulation as well as to the Minnesota Office of Lawyer Professional Responsibility.

**SCR 20:1.15(h) Dishonored instrument notification; (Overdraft notices).**

All demand trust accounts and demand fiduciary accounts are subject to the following provisions on dishonored instrument notification:

- (1) **Overdraft reporting agreement.** A lawyer shall maintain demand trust accounts only in a financial institution that has agreed to provide an overdraft report to the office of lawyer regulation under SCR 20:1.15 (h) (3).

## Prohibited transactions

**Cash Disbursements:** No disbursement of cash is permitted from a trust account or from a deposit to a trust account. Similarly, no trust account check can be payable to "Cash."

**Telephone, Internet and other Electronic Transactions:** Deposits and disbursements cannot be made from a trust account by a telephone transfer of funds or by an internet transaction. In addition, credit cards and debit cards cannot be used to transfer funds to or from a trust account. Furthermore, a lawyer cannot authorize a third party to electronically withdraw funds from a trust account.

**Note: Wire Transfers** to and from a trust account **are permitted.**


**SCR 20:1.15(e)(4)g.** describes a limited exception to this rule's prohibition against a number of electronic transactions. The exception applies only to trust accounts used in collection work. In order to qualify for this exception, a firm must petition the Office of Lawyer Regulation for a separate, written agreement, allowing the law firm to conduct those types of transactions, and must establish that the prohibited transactions constitute an "integral part of the lawyer's practice." Law firms authorized to use the prohibited electronic transactions must comply with certain requirements, including: audits, record production, malpractice insurance, and crime bonding.

### **SCR 20:1.15(e) Operational requirements for trust accounts.**

#### **(4) Prohibited transactions.**

- a. **Cash.** No disbursement of cash shall be made from a trust account or from a deposit to a trust account, and no check shall be made payable to "Cash."
- b. **Telephone transfers.** No deposits or disbursements shall be made to or from a trust account by a telephone transfer of funds. This section does not prohibit wire transfers.
- c. **Internet transactions.** A lawyer shall not make deposits to or disbursements from a trust account by way of an Internet transaction.
- d. **Electronic transfers by 3rd parties.** A lawyer shall not authorize a 3rd party to electronically withdraw funds from a trust account.
- e. **Credit card transactions.** A lawyer shall not authorize transactions by way of credit card to or from a trust account. However, earned fees may be deposited by way of credit card to a lawyer's business account.
- f. **Debit card transactions.** A lawyer shall not use a debit card to make deposits to or disbursements from a trust account.
- g. **Exception: Collection trust accounts.** Upon demonstrating to the office of lawyer regulation that a transaction prohibited by sub. (e) (4)c., e., or f. constitutes an integral part of the lawyer's practice, a lawyer may petition that office for a separate, written agreement, permitting the lawyer to continue to engage in the prohibited transaction, provided the lawyer identifies the excepted account, provides adequate account security, and complies with specific record-keeping and production requirements.

## Proper identification of trust accounts

**SCR 20:1.15(b)(2)** requires a trust account to be identified as a "Client's Account," a "Trust Account," or with "words of similar import." The rule further specifies that using an acronym, such as "IOLTA," without further elaboration, does not properly identify a trust account. For more information, see: [Proper Identification of Trust Accounts](#) 

**Note:** This titling requirement does not apply to fiduciary accounts.

### **SCR 20:1.15(b) Segregation of trust property.**

**(2) Identification of account.** Each trust account shall be clearly designated as a "Client Account," a "Trust Account," or words of similar import. The account shall be identified as such on all account records, including signature cards, monthly statements, checks, and deposit slips. An acronym, such as "IOLTA," "IOTA," or "LTAB," without further elaboration, does not clearly designate the account as a client account or trust account.

## Record retention requirements

Under **SCR 20:1.15(e)(6)**, complete trust account records must be maintained and preserved for at least six (6) years after the termination of the representation.


### **Rule: SCR 20:1.15(e) Operational requirements for trust accounts.**

**(6) Record retention.** A lawyer shall maintain complete records of trust account funds and other trust property and shall preserve those records for at least 6 years after the date of termination of the representation.

See *also*, **SCR 20:1.15(f)(4)** and **Computer-generated trust account records**.

## Required records

### **A. Demand (checking) trust accounts**

[SCR 20:1.15\(f\)\(1\)](#)  describes, in detail, the records that must be maintained for a trust account that is a checking account. Those records include:

1. A Transaction Register with a + balance;
2. Individual Client Ledgers with a running balance for each client or matter;
3. A Ledger for Account Fees and Charges with a running balance;
4. Deposit Records (including deposit slips);
5. Disbursement Records (including canceled or imaged checks\*);
6. Monthly Statements from the financial institution; and
7. Monthly Reconciliation Reports.

For sample records, [click here](#) 

\*Canceled or imaged checks must be obtained from the financial institution on a monthly basis. Imaged checks must include both the front and the reverse of the check, and meet certain requirements regarding size and content.

## **B. Non-demand trust accounts**

**SCR 20:1.15(f)(2)** describes the records that must be maintained for a trust account that has no check writing capabilities. Those records include:

1. Passbooks;
2. Records of electronic fund transactions, i.e., wire transfers;
3. Duplicates of any instrument issued by a financial institution;
4. Duplicate deposit slips; and
5. Duplicate withdrawal slips.

## **C. Fiduciary accounts**

Fiduciary funds can be held in demand (checking) or non-demand accounts that are administered by the attorney in a fiduciary capacity. For example, an attorney holding funds as trustee for a trust must hold those funds in a fiduciary account. Lawyers must retain “records of receipts and disbursements as necessary to document the transactions” in fiduciary accounts.

**SCR 20:1.15(j)(5)** describes the records that must be maintained for fiduciary accounts. Those records include:

1. All monthly or other periodic statements provided by the financial institution to the lawyer; and
2. All transaction records, including:
  - a) Canceled or imaged checks;
  - b) Passbooks;
  - c) Records of electronic fund transactions;
  - d) Duplicates of any instrument issued by the financial institution;
  - e) Duplicate deposit slips identifying the source of any deposit; and
  - f) Duplicate withdrawal slips identifying the purpose of any withdrawal.

## **Timing of disbursements**

Under **SCR 20:1.15(e)(5)a.**, funds cannot be disbursed unless the deposit from which the funds will be disbursed has cleared. Lawyers should be familiar with their financial institutions fund availability policies and should not make a disbursement prior to the institution’s availability date.

**Rule: SCR 20:1.15(e)(5) Availability of funds for disbursement.**


- a. Standard for trust account transactions.** A lawyer shall not disburse funds from any trust account unless the deposit from which those funds will be disbursed has cleared, and the funds are available for disbursement.

Lawyers need to be aware of the time that their financial institution “closes” business for the day as this may occur well before the doors to the institution actually close. Many banks begin deferring the recording of transactions to the following business day at some point each afternoon. To further complicate matters, in some banks, each teller line has a different “closing”

time. As a result, all transactions that occur after the bank's or teller line's "closing" time are recorded as if they occurred on the following day.

Consequently, it is advisable to determine the time at which the firm's bank closes its business for the day so that this information can be provided to law office staff and taken into account when scheduling matters that have trust account implications. Such matters include real estate transactions, personal injury settlements, and the timing of routine deposits to the trust account. It is also advisable to confirm at the time a deposit is made that it will be recorded that day, rather than the following day.

There are two exceptions to this rule:

**1. Real Estate Transactions** – Since real estate transactions in Wisconsin require a simultaneous exchange of funds at the closing, SCR 20:1.15(e)(5)b. provides an exception to the availability requirement with respect to real estate transactions. Pursuant to that rule, lawyers may disburse certain types of funds, despite the fact that those funds are not yet available, so long as the funds are deposited within one business day of the closing. The types of funds that qualify for disbursement prior to availability include, among others, lenders' checks, cashier's checks and broker's checks. While personal checks are allowed, the maximum amount of all personal checks per closing is limited to \$5,000. The types of funds covered by this exception are identified in [SCR 20:1.15\(e\)\(5\)b.](#) 

**Note:** Under the real estate exception, the disbursing lawyer is responsible for reimbursing the trust account for any funds received at a closing that are not collected. [See, SCR 20:1.15(e)(5)bm. at above link.]

**2. Collection Trust Accounts** – Funds collected on behalf of a client and deposited into a separate trust account for that client may be disbursed pursuant to the client's demands, even though the funds may not have cleared. Funds in a client-specific collection trust account may be disbursed electronically under limited circumstances, pursuant to **SCR 20:1.15(e)(5)c.**

**Rule: SCR 20:1.15(e)(5) Availability of funds for disbursement.**

**c. Exception: collection trust accounts.** When handling collection work for a client and maintaining a separate trust account to hold funds collected on behalf of that client, a lawyer's disbursement to the client of collection proceeds that have not yet cleared, does not violate sub. (e) (5)a. so long as those collection proceeds have been deposited prior to the disbursement.